of guarantee. Ong was a very experienced businessman. In the course of his business, he had signed many guarantees. He knew what guarantees were all about. When he found himself liable to the plaintiffs under the two guarantees he tried to wriggle his way out by making unfounded allegations. He was not, in my view, a truthful witness. I was satisfied that both the letters of guarantee were signed by Ong on the morning of 28 March 1980.

There were other unsatisfactory features in Ong's defence. The first relates to the particulars in the guarantee documents. I agreed with Mr Gill that there were material contradictions between what Ong had said about the guarantees and what his son had said on them. It was impossible to reconcile both their evidence. Another, was Ong's evidence that he was misled by Lui's assurance that his liability was nominal. I disbelieved him when he said that Lui had assured him that ample security by way of fixed deposits would be placed with the plaintiffs for the credit facilities.

Plainly, the plea of non est factum was not available to Ong. Even the principles enunciated in the *Avon Finance* case[1] cannot apply to him. For reasons I have already given, there was no inequality of bargaining power. Clearly, the defence that had been put forward on his behalf cannot be sustained. I, therefore, entered judgment against Ong in favour of the plaintiffs as claimed in both suits. However, I ordered that the rate of interest payable to the plaintiffs should be at the prevailing rate at the material time rather than as prayed for.

Order accordingly.

Solicitors: *Shook Lin & Bok; YH Cheong.*

Reported by *Liu Hern Kuan*

Peck Constance Emily v Calvary Charismatic Centre Ltd

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 475 OF 1988
CHAN SEK KEONG J
11 JANUARY 1991

Companies and Corporations — Members — Removal — Plaintiff an ex-member of the defendant company — Removed as member pursuant to defendants' EGM and board meeting — Whether such board meeting ever took place — Whether board meeting contravened rules of natural justice and/or article in defendants' articles of association — Applicability of natural justice rules to corporations

Criminal Law — Standard of proof — In relation to an averment of a crime in civil proceedings — Balance of probabilities — Penal Code (Cap 224, 1985 Ed), ss 120A, 191, 192 & 193

The action was commenced by the plaintiff who sought a declaration that she was still a member of the defendant company which was a company incorporated by guarantee under the Companies Act (Cap 50, 1990 Ed). The defendants or the members collectively are a church.

The defendants' church board became aware in 1987 of serious accusations being made by the plaintiff against the senior pastor and the leadership of the church. The defendants claimed that various attempts were made to counsel her but these were to no avail. At an extraordinary general meeting ('EGM') of the defendants it was voted that the plaintiff be removed as a member of the defendant company. This decision was also resolved at a subsequent board meeting.

The plaintiff's action, when commenced, was founded on the alleged invalidity of the resolution passed at the EGM of the defendants which purported to remove the plaintiff as a member, and the non-existence of an alleged board meeting which also resolved to remove the plaintiff as a member of the defendant company. The defendants conceded that the EGM resolution was not legally effective to remove the plaintiff as a member. The plaintiff then proceeded with this action on the bases that: (i) there was no board meeting and (ii) if there was, it was null and void on the grounds that (a) it failed to comply with art 9 of the defendant company's articles of association in that no persistent efforts had been made to win her back to the standard of faith and conduct required of an ordinary member of the church; and/or (b) it contravened the rules of natural justice, viz, (i) the right to be heard by an unbiased tribunal; (ii) the right to have notice of the charges of misconduct; and (iii) the right to be heard in answer to those charges.

Held, dismissing the plaintiff's action with costs:

(1) From the evidence and the plaintiff's conduct during the pre-trial stage there was no reason to believe that the board meeting was fictitious. Furthermore, the internal evidence lent support to its existence. The minutes of that board meeting showed that the board not only ratified the EGM resolution but also passed its own resolution to remove her.

(2) The plaintiff's charge against the defendants was no less than that the members of the church board had committed the following criminal offences in order to secure her removal as a member of the defendants:

(i) giving false evidence under s 191 of the Penal Code (Cap 224, 1985 Ed) ('the Code');
(ii) fabricating false evidence under s 192 of the Code;

(iii) using false evidence known to be false under s 193 of the Code; and
(iv) criminal conspiracy under s 120A of the Code.

The standard of proof in relation to an averment of a crime in civil proceedings is the balance of probabilities; but there are degrees of probabilities. Here, the plaintiff's attempt to establish the charges solely through the means of cross-examinations and argument fell far short of the standard of proof required.

(3) As regards the plaintiff's allegation that art 9 of the defendant company's articles of association had been contravened in that the church board had not made patient and persistent efforts by some members or members delegated by the board to win her back to the standard of faith and conduct required of her, there was overwhelming evidence that efforts of a degree that were both patient and persistent had been made by members of the church board. There was no need imposed by art 9 for the board to pass formal resolutions every time they desired to appoint pastors to counsel or win back doubting members. Every pastor who attended any church board meeting (pastoral or otherwise at which the conduct of the plaintiff was discussed) was entrusted with the responsibility of winning the plaintiff back into the fold. Any informal delegation is sufficient, and therefore each of the pastors who counselled the plaintiff was delegated, in law and in fact, to do so.

(4) It could not be said that the rules of natural justice do not apply to a company. Incorporation is an important factor to be taken into account in the application of such rules, primarily because the directors owe a duty to act in the interest of the company which may be, in certain circumstances, incompatible with such application. But it is not the only or decisive factor. Equally important is the nature of the decision to be made. The correct approach is not to ask what the defendants are but what form and nature of the power is that is exercisable and the consequences to the affected member upon its exercise, having due regard to the express words of the power.

(5) The nature of the power in art 9 was expulsion on the grounds of misconduct. The power was not expressed in unrestricted terms. It may be that if the board made a bona fide decision on the evidence before it that a particular member had been guilty of any misconduct a court of law will not substitute its opinion for that of the board, but that was no reason for holding that the rules of natural justice should not apply in arriving at that opinion. Expulsion based on misconduct, thus, is readily subject to the rules of natural justice and there was nothing in the fact of incorporation of the defendants which made it incompatible for the church board to exercise its powers in the interests of the defendants and to do it in compliance with the rules of natural justice.

(6) Bias as an aspect of natural justice does not apply to a company or board meetings. Members are not required by law to vote in any person's interests (including that of the company) other than their own. Directors are only required to vote in the interest of the company and the members as a whole and to exercise their powers in good faith. The fact that one director has a personal animosity against another director or member does not mean that he cannot vote against that director's or member's interest in the interest of the company. The two are not incompatible.

In any case, the question of bias or likelihood of bias is irrelevant simply because the board's resolution to expel the plaintiff was made after and in confirmation of the EGM resolution. The church board decided not to exercise their power without the sanction of the members at the EGM. They were given an overwhelming vote to do so. They themselves did not vote on the EGM resolution. In convening the EGM, the church board had taken a step which precluded any accusation of bias or likelihood of bias against any member of the board.

(7) On the evidence, the plaintiff was aware that item one of the agenda of the EGM was directed against her, which was why she avoided the EGM. She was not prepared to confront the church board with and explain or defend her accusations before the general body of the members. As regards the opportunity to be heard, there was nothing in art 9 which stated that the plaintiff had to be given another opportunity to be heard before the board could act to expel her. All that it required was that the board should be satisfied that patient and persistent efforts had been made and made in vain. The issues in this case were well-known to the plaintiff and she knew the charges and the business of the EGM which was to expel members for sowing discord within the church but she deliberately kept away from the EGM. The plaintiff was therefore not in a position to complain that she was denied the opportunity to defend the charge or charges made against her at the EGM or that the church board, in proceeding in the way they did, had acted unfairly against her.

[*Editorial Note*: The plaintiff has appealed to the Court of Appeal vide Civil Appeal No 17 of 1991.]

Cases referred to

1 *Hornal* v *Neuberger Products Ltd* [1957] 1 QB 247 (folld)
2 *Bater* v *Bater* [1951] P 35; [1950] 2 All ER 458 (folld)
3 *Gaiman & Ors* v *National Association of Mental Health* [1971] 1 Ch 317 (folld)
4 *Dr Bentley's Case* (1723) 1 Str 557; 92 ER 818 (folld)
5 *Russell* v *Duke of Norfolk* [1949] 1 All ER 109 (folld)
6 *Stevenson* v *United Road Transport Union* [1977] 2 All ER 941 (folld)

Legislation referred to

Penal Code (Cap 224, 1985 Ed) ss 120A, 191, 192, 193

Fong Kwok Jen for the plaintiff.
Vinogopal Ramayah (*Hilda Ng* with him) for the defendants.
KS Rajah (watching brief for directors of defendants).

Cur Adv Vult

Chan Sek Keong J: This is an action by the plaintiff against the defendants for a declaration that she is still a member of the defendant company which is a company incorporated by guarantee under the Companies Act (Cap 185, 1970 Ed) ('the Act') on 13 November 1978.

The principal objects of the defendants are:

(a) To bring the Christian message of salvation from sin by faith in Jesus Christ to one and all.
(b) To encourage believers to receive and live a full gospel testimony.
(c) To help believers in spiritual matters and to further spiritual fellowship.
(d) To engage in such charitable and welfare work as the company may think fit ...

The defendants or the members collectively are a church (and for this reason, the expression 'church' will also be used hereafter to refer to the defendants). The affairs, both secular and religious, of the defendants are managed by a church board comprising the chairman, treasurer and two other elected members, subject to the overriding powers of the chairman in relation to spiritual affairs. The board members are nominated by the chairman subject to ratification by the members. The chairman, whose term of office is unlimited (but subject to removal in certain circumstances), is also the senior pastor of the church and he has power to appoint other pastors. The first chairman of the defendants was Rev Frederick Oliver Seaward III (hereinafter referred to as the 'Sr Pastor').

This action, when commenced on 14 May 1988, was founded on the alleged invalidity of a resolution ('the EGM resolution') passed at an extraordinary general meeting of the defendants held on 17 April 1988 ('the EGM') which purported to remove the plaintiff as a member. On 3 March 1989, the originating summons was amended to seek two additional declarations that two board meetings of the defendants held on 8 and 19 April 1988 were also null and void. On 28 November 1989, another amendment was made to allege that the EGM resolution was contrary to the rules of natural justice. Finally, on the second day of the hearing ie 1 December 1989, the originating summons was once more amended to plead that the board meeting of 19 April 1988 had never been held, or alternatively, it contravened the rules of natural justice and/or in breach of art 9 of the articles of association.

As counsel for the defendants has, in the course of the hearing, conceded that the EGM resolution was not legally effective to remove the plaintiff as a member, it is not necessary to consider whether or not the notice of the EGM had been properly served or effected on the plaintiff, and if not, whether the irregularity could be cured under s 392(2) of the Act. It is also not necessary to decide whether the board meeting of 8 April 1988 was null and void on the ground that the plaintiff had no notice of the same as her status as a member was not affected by that meeting.

The remaining issues in dispute at the conclusion of the plaintiff's case were as follows:

(1) whether there was a board meeting on 19 April 1988, and

(2) if there was, whether the decision made thereat ('the board decision') to expel the plaintiff as a member of the defendants was null and void on the grounds that it (a) failed to comply with art 9 in that no persistent efforts had been made to win her back to the standard of faith and conduct required of an ordinary member of the church, and/or (b) contravened the rules of natural justice.

The material events in this action began at the end of 1987 when the church board became aware of serious accusations being made by the plaintiff against the Sr Pastor and the leadership of the church. In addition to the affidavits of certain members of the church board, the following persons also swore affidavits which testified as follows:

1 Del Tarr, the president of the Bible College at the California Theological Seminary, an affiliate of the church, who was then a pastor, deposed in his affidavit of 14 September 1989 as follows: (a) that in early January 1988, the plaintiff expressed impatience, disdain, and intolerance for a pastor from Indonesia who preached at the meeting held by the defendants; (b) that subsequently, he had had several discussions with the plaintiff when she criticized various aspects of the church organization and leadership and he had counselled her to give the church time, that after a while he formed the view that she was seeking to undermine the church as she had told him that the church leadership and, in particular, the Sr Pastor was misappropriating the funds of the church, preaching false doctrine, propagating a cult (ie an organization which denies the divinity of Jesus Christ) and coercing members into giving tithes, that he corrected and counselled her but she rejected outright his counsel; (c) that she showed a vindictive attitude towards the church and spoke in a defamatory fashion about the church leadership and also displayed deep feelings of ethnocentricism when she said, 'All you Westerners should go home and never come back'; (d) that he himself had spent at least 20 hours counselling her.

2 Danny Tan Kok Hua, a company director, in his affidavit of 10 January 1989, deposed that in January 1988, the plaintiff, without solicitation, told him and his wife as follows: that she had evidence that the Sr Pastor had embezzled large sums of money from the defendants and was in the course of making preparations to abscond with these funds to New Zealand; that the Sr Pastor was 'an empire builder' seeking 'glorification'. The witness also deposed that the plaintiff's husband, who was present, had readily agreed.

3 David Markese, a pastor of the defendants, deposed in his affidavit of 12 May 1988 as follows: (a) that the plaintiff complained to him that the church leadership in general were 'yes men' to the Sr Pastor; she cast aspersions on their pastoral and counselling efforts; (b) that she told him that she had worked very hard for the church but was not rewarded for her steadfast efforts as the Sr Pastor was never pleased with them; she also expressed disappointment when she was not selected as an interim helper to assist the divisional pastors in the interim supervision of

members of the discontinued Life Group System; (c) that she described the leadership style of the church as one of theocratic authoritarianism; (d) that at several of such encounters, he counselled her on her wrong attitude but she told him not to pray for her.

4 Oon Cheng Pew, an associate pastor of the church, in his affidavit of 29 November 1989, deposed that in January 1988, the plaintiff telephoned him and voiced her discontent with the church leadership, especially the Sr Pastor who, she alleged, was misappropriating funds, propagating a cult and putting fear into people's hearts to give money to the church, and that she was gathering more evidence to put the Sr Pastor in jail. Oon said that he counselled her against her sinful conduct and that on the next day, she said her attitude on the previous day was wrong. He told her that her problem with the Sr Pastor should be resolved in private with the Sr Pastor.

5 Chng Lian Mow, an associate pastor of the church, in his affidavit of 29 November 1989, deposed as follows: (a) that in early 1988, a member of the church telephoned him about the plaintiff's negative statements about the Sr Pastor which was disturbing spiritually; (b) that in February 1988, when he met her and told her he was going for home visitations, she made a statement (that she was glad that there were still pastors who cared to do so) in which he detected sarcasm and cynicism in her spirit.

6 Abraham Mendoza, a divisional pastor of the church, in his affidavit of 4 November 1989, deposed (a) that the plaintiff met him in January 1988 in the church's premises and began to strongly attack and criticize the Sr Pastor (i) as being dictatorial, cultic and abusive of his position, (ii) for his unwise handling of the church's funds, (iii) the leadership and the 'program' of the church, that she also questioned the appointments of two women divisional pastors, saying that she was more qualified than they and that she should have been appointed at least as an assistant divisional pastor and (b) that in March 1988, she telephoned him and again alleged that the Sr Pastor was siphoning funds to another country.

7 Robert H Houlihan, the Fast East field director for the Division of Foreign Missions of the General Council of The Assemblies of God to which the church was affiliated, in his affidavit of 29 November 1989 deposed that on 2 April 1988 he had met with six members of the church, which included the plaintiff and her husband at their request, when they expressed three concerns to him: (a) that the Sr Pastor was not giving adequate responsibility to the other leaders of the church; (b) that they had suspicions about the management of the church's funds but were unable to specify the basis of their suspicions; (c) that unless they were given the opportunity to be more deeply involved in the decision-making process of the church, they would proceed to lodge complaints with the relevant authorities. He advised them that if there was a problem, it was an internal problem which should be dealt with by the church pastors and elders. He also told them that the Sr Pastor had not changed his style of leadership since starting the church and that if they did not like his leadership and the church policy, they should consider attending some other church and that he then counselled them as follows: (i) that they should respect the leadership of the local assembly which had five pastors as well as elders who worked with the Sr Pastor and to obey the directions of such leadership; (ii) that they should place the whole matter in the hands of the Lord and that if they were not careful they would bring harm and pain to the work of God and also to themselves and the whole church family.

These seven affidavits were filed to rebut the denials of the plaintiff made in her affidavit of 9 November 1988 which was filed in reply to the joint affidavit of Wendel D'Cotta, Julie Lim, Elaine Wan, Low Siew Chuan and the Sr Pastor sworn on 4 November 1988 in which they had set out their reasons (ie the said accusations) for expelling her from the church. In her affidavit of 9 November 1988, the plaintiff denied having spoken disdainfully about the Indonesian pastor, who was a good friend of hers, and claimed that, being in a state of jet lag, she had found him long-winded and had signalled him that the hour was late. With respect to the other matters, she claimed that all she had said were as follows:

(a) that the defendants had on many occasions made strenuous appeals for the raising of money for the work of the church;

(b) that those in leadership positions including myself had an obligation to ensure that these moneys were properly stewarded and spent as these moneys were raised from donations and offerings of members and well-wishers;

(c) that it was my observation that the defendants had been irresponsible and exercised bad stewardship in three projects:

(i) the defendants at their tenth anniversary celebrations in November 1987 ordered food for 30,000 people for a meeting held at the National Stadium. A massive amount of this food was wasted as the projected number of people did not show up;

(ii) the defendants had made many mistakes in the printing of the souvenir programme for the anniversary celebrations which necessitated a reprinting of the programme by a different printer a few days before the event. This came about because of the defendants' failure to identify the mistakes

earlier. Over $20,000 was wasted because of their negligence;

(iii) the defendants had in December 1987 spent about $81,000 on an event called 'The Singing Christmas Tree'. This is a lot of money and much time had been spent for rehearsals. There was considerable output for only two performances. I also had taken objection to the statement of one of the defendants' employees who was quoted in the local press as saying that the Singing Christmas Tree should make its way to the Guiness Book of Records, as this sort of publicity was not in tandem with the true calling of any church organization.

(d) that during 1987, there was much news of scandals affecting Christian organizations in the United States. I said then as I do say now that:

> Christian organizations should be seen to be exemplary in their conduct and Christian leaders should set the example of being humble as Christ was and not autocratic and dictatorial.
>
> We should exercise responsible standards of behaviour for all to see and this is true also in the area of our finances and expenditure and churches should not be accused of being profligate.
>
> We should not be judgmental about those ex-members who had left the church or to those who appear less active in the activities of the church.
>
> We should not blindly follow our leaders and respond automatically to instructions. Instead, every action should be viewed through the eyes of Christ whose standard is the model for all Christian organizations.

If indeed the plaintiff had made these statements only, it would show that she was more concerned about the welfare and administration of the church than the members of the church board. However, as the seven affidavits filed in reply directly contradicted the plaintiff's version of her observations, and as the plaintiff did not file any affidavit in reply, the conclusion that I must draw is that she had no reply. That being the case, I must find as a fact that she did make all the allegations against the leadership of the church, with particular reference to the conduct of the Sr Pastor, as recounted in the seven affidavits. I also find as a fact from the evidence adduced in court that the plaintiff had not at any time wished to confront the Sr Pastor with her allegations. She had, in February 1988, met with the Sr Pastor in the presence of the Rev Bob Weiner but on her own admission had merely told him that she did not trust him and had lost confidence in him as a leader, but without giving specifics of the Sr Pastor's conduct or actions that had led her to that position. It would appear that she preferred to air her grievances to all and sundry behind the back of the church leadership. Counsel for the plaintiff has submitted that the exchange of correspondence between the Sr Pastor and the plaintiff during the period from 31 March 1988 to 15 April 1988 showed that it was the Sr Pastor who did not wish to meet with her. The correspondence however showed that the Sr Pastor wanted to meet with her and other members of the church but she insisted on inviting outsiders to attend the proposed meeting.

Events leading to plaintiff's expulsion

The church board held many pastoral meetings at which the conduct of the plaintiff was discussed. They decided that they should meet with the plaintiff to counsel her with a view to reconciling her with the church. They arranged a meeting on 8 March 1988. The plaintiff's version of this episode is set out in paras 6, 7 and 8 of her 9 November 1988 affidavit as follows:

> 6 As for 8 March 1988, I received a call from Rick Seaward at about 6pm and was asked to meet him later in the evening. I said that that was not convenient as I had no transport. It was subsequently agreed that he would come to my apartment that very evening. Before the conversation ended, I asked him whether he was coming alone as I had wanted to prepare some food. He then said that he was bringing the entire church board. I then said that I wanted to refer this matter to my husband as I was not prepared to discuss matters which required the presence of the church board at such short notice. It then occurred to me that this was no pastoral visit but it had the makings of a confrontation. Immediately thereafter, I spoke to my husband who telephoned Rick Seaward and enquired as to the purpose of the meeting and its agenda. Rick Seaward flatly refused to answer that question. My husband persisted as he wanted to know specifically the purpose of that visit and as no answer was forthcoming, he went to the defendants' premises and categorically informed Rick Seaward that the meeting could not take place as my husband and I had not yet met with him individually. We wanted to because the Scriptures say that any differences between Christians should be settled between the individuals first. My husband also said that he had a lot of work to do that night. After advising thus, my husband returned to his office but felt very uneasy over Rick Seaward's attitude. He then returned home.
>
> 7 At approximately 10.30pm of that evening, I was informed by the security guard that a bearded Caucasian (resembling Rick Seaward) together with three other men had arrived in a car (SBB 7353) and were proceeding to my apartment. When they arrived, they started to press my door bell incessantly and started to rattle the grill door and called out loudly my Filipino maid's name. They created a commotion. I might also add that my husband was more than willing to meet the gentlemen concerned but my son and I had to restrain him as we knew that without objective and thoughtful mediation, there would have been unpleasantness if we had done so. The defendants are guilty of misrepresentation if they are saying that their visit was a pastoral one. Their refusal to declare the purpose of their visit, their persistence and the commotion created show that the nature of their visit was far from one of reconciliation or of counselling. They had intimidated me and my family and caused us fear. Their belligerent conduct has not only embarrassed my household with my neighbours but brought much discredit to all that the defendants, a Christian organization, stand for. I deny that a phone call was made to Dr Del Tarr. I subsequently sought legal

counsel and was advised to make a police report. I was further advised by the police personnel at the Tanglin Police Station that the defendants' visit could be termed as harassment and I now exhibit herewith a copy of my police report dated 27 March 1988 marked as CEP-5.

8 On 9 March 1988, it was my husband and I who had arranged for a meeting with Irvin Rutherford who is a long-time friend. My husband may have said that we were harassed by the gangsters-like behaviour of the gentlemen concerned. This meeting took place at the poolside of the Tanglin Club in the evening but little was achieved because Rick Seaward started the meeting by accusing my husband of being a liar. I am advised that Irvin Rutherford subsequently met Rick Seaward and chastised him for his spurious allegations during the meeting.

The defendants' version of this episode was quite different. Several board members not only made affidavits concerning this episode but also gave oral testimony on which they were cross-examined by counsel for the plaintiff. Their evidence was that the plaintiff's husband had earlier agreed to attend the pastoral meeting as he was in the church premises attending another function. They were supposed to meet at about 9pm. It was only when he failed to turn up that they decided to despatch four pastors to the plaintiff's house to talk with her. They were denied entry and were later accused of harassment in a police report made by the plaintiff on 27 March 1988, ie 19 days after the event.

After this incident, the church board decided that it was useless to try to win her back to the church, as any further attempts might be misinterpreted to the detriment of those making the attempts. On 8 April 1988 the church board held a meeting at which it was decided that the EGM be held on 17 April 1988 for the purpose of removing from membership of the church members who were sowing discord within the Body. The church board has conceded that this resolution was directed against the plaintiff. The form of the notice of the EGM which was approved did not name the plaintiff as the member to be removed.

Proceedings at the EGM

The EGM was chaired by the Sr Pastor. He began the meeting by discoursing on the meaning of sowing discord and its condemnation in the Scriptures. He then explained why the board wanted the members to vote on the board's resolution to expel the plaintiff. Having outlined the board's charges against her, he proposed the motion to expel the plaintiff on the grounds that she was acting in a manner unbecoming of a member of the church and sowing discord within the church. After the motion was seconded by a member, the members were invited to express their views on the motion before it was formally put to the vote.

The first member to speak, one Simon Tan, said that the plaintiff had talked to him a few times, that she loved the church but disagreed on the way the ministry was run, that it was a matter of personal opinion, that he did not feel 'divided' by such opinion, and that since it was not known how many members she had talked to she should be present at the meeting instead of the members being given a one-sided story. The Sr Pastor replied that he was merely relating what he had heard from 10 to 15 people, that the plaintiff knew about the meeting but chose not to be there. Then followed an exchange between one Peter Lim (who also said that the plaintiff loved the Body) and the Sr Pastor on the meaning of sowing discord.

Douglas Choo spoke next. He said that it was very difficult to say whether the Sr Pastor or the plaintiff was in the right unless she was present. He asked what the church had done to help her if she were in the wrong. Pastor Chris Low answered this quesiton and said that he had counselled her and that the leadership did not want to bring the matter out into the open unless it was necessary. The Sr Pastor then said that the plaintiff was hurting the church with her accusations. At this point, the plaintiff's husband joined in the discussion. He said:

> Pastor, you mentioned earlier that she chose not to come. Constance can't come. I'd like to just put that on record. Because Stanley has just been released for a few hours from the army. He's in the officers cadet corp and he's been four nights without sleep and he wants her very much. Right now she's bringing him back to camp until she can bring him in. So I just like to make mention of that. It's not by choice, otherwise Constance would dearly love to have been together with the Body that she loves ever so much.

He then said that the alleged accusations of the plaintiff were foreign to him, that the Sr Pastor had made no effort to contact her, not even by telephone, to which the Sr Pastor replied that he did not dare to do so for the fear of his telephone being tapped, that he had met with the plaintiff for four hours in October, then in February with the Rev Bob Weiner when she was not ready to talk to him. He also said that on that Tuesday evening when Alan Peck called him back (after he had told her that the board would like to meet with her) to ask what the meeting was all about, he had told Alan that they needed to talk to the plaintiff about her sowing discord, that they needed to warn her that the church board would have to do something about her membership. Then followed this exchange:

> Sr Pastor:
>
> In that night when you ranted and raved. That night when you would not meet with the board we went to your house, three pastors & I, you would not open the door, you told your maid not to open the door. You would not take to us. We tried to call you from downstairs you would not answer the phone, and the next night when I sat with you and Bros Rutherford you accused us of coming as gangsters. You told me you called your neighbours. They had infra-red cameras you said. You told me that my pictures were taken. You further told me that if anything happened to

your wife or child, we would immediately be implicated by the police. From that time on, with the kind of legal action you were threatening me with, I told you I would not meet with you or Constance ever again alone, I would have to have people with me because I could not have come alone and have the words twisted. I have tried. We have tried to talk, we have tried to work things out, we have tried to caution Constance on her sowing discord.

Alan Peck:

I wouldn't want to go into the sequence of what has happened, but when you met with Constance in October it was not one seeking reconciliation. And our Lord would really smile when both you and Constance come together and become reconciled. Instead you are taking such action right now that is so severe. During the three-hour session that you had, I understood that you were 'to-ing' & 'fro-ing' not so much on seeking reconciliation but on the type of work. You even told her that if she had too much of an intellect and that she had to commit intellectual suicide. God has given to each one of us an intellect and it's sad that if we have to walk around like dummies or zombies. Let me move on ...

Then followed another exchange between them about what had happened on that night. Alan Peck said that he and his wife did not know who the four pastors were, that they created a scene and that one of them pressed the door bell for 20 minutes. To this, Pastor Peter Chng said that he was the person who had pressed the door bell, but not for 20 minutes. Then Pastor Alphonsus Oon spoke as follows:

I'd like just to say a few things also as regard what Bro Douglas brought forward earlier, that 'no one ministered to Sis Constance when she was in need.' I believe many did because of the virtue of the fact that she approached at least 20 persons ... I was one of them that she called during one evening and we talked for quite a long time, and I noticed that the way that she put things is not becoming of a Christian, is not one who loves the Lord because if you love the Lord we will not slander or touch the anointed servant of the Lord because ... you read in the old testament, even though King Saul was first anointed first King of Israel he fell from grace ... and so you know to say that Constance loved the Lord, I do not doubt that she loved, but during those times when she acted and I've witnessed to that ... when she spoke to me you know I cautioned her. I said 'Constance, if you do want to correct the church in any way, if you find the things that are going wrong are not right, ... this is not the way. The way you speak, the way you carry on', I said 'it's sin.' And so 'you cannot correct what you think is wrong in the church with something that is sinful. You don't overcome evil with evil, you overcome evil with good not evil with evil.' And during the talk she slandered really she just played down every pastor, every minister, within the church. And I was shocked because I was away most of the time (I wasn't here in Singapore, I was in Johore Baru). And I love Constance. I love Bro Alan. I know them from the very first day that I left my job to be in the full-time ministry as a worker in the church. And I know them, I love them, and I treasure them ... I advised her and during the conversation she did mention to me that she had and they are collecting evidence to put Pastor in jail. This is her word to me. I can personally vouch that because she mentioned that to me ... I was shocked and I said, 'Constance is it really the way it is, but you know you should, whatever it is, go to him and do the scriptural pattern of approaching right authorities and doing it the right way.' ... it is sad for me to say this, it's not that I don't love my heart still is loving her and wanting to see her restored to the Body and not to be separated or expelled in this manner ...

After this speech, another member, Aubrey Seah, questioned the Sr Pastor on the biblical meaning of 'discord' and the board's definition of 'acting in a manner unbecoming of a member'. He did not think that the plaintiff's threat to put the Sr Pastor behind bars was unbecoming conduct since she could not do so and only the law could do so.

Several speakers followed. Michael Teo sought clarification on the difference between legal expulsion from membership and spiritual expulsion from the Body. Edmond Chee asked the Sr Pastor whether he had followed Matthew 18:15-16 in order to effect a reconciliation, and whether the plaintiff had been given notice of the charges against her, to which the Sr Pastor replied that he had not as every member ought to be present. Peter Lim said that the whole matter was a conflict with the church leadership or the way the church had been run, but that he did not understand any conduct leading to such conflict was conduct unbecoming of a member.

After these three speakers had spoken, the Sr Pastor summed up the case of the board against the plaintiff in the following words:

Now we'll just in conclusion ... review again the motion of the board for the Body. The action that we felt unbecoming of a member, involves accusations in a person's house, against the church and the leadership, accusations of wrong dealings with money, that has ended up necessitating an unsaved husband to tell his saved wife, that she was forbidden to ever come back to Calvary Charismatic Centre because of those statements, or going to people outside the church dealing with church matters, involved in approaching the students in trying to get them to sign a petition, involving sharing in an ATCEM class openly against leadership that affected even unity within the church of our sister church up in Johore Bahru, involves statements to people that she would ruin the ministry of Pastor Seaward, that she would have me put behind bars. Now we're not saying that those actions could have ever been done, we're saying the statements, the intent, the motive, these are the kind of things we're dealing with. Are these scriptural? Are they the kind of things that are going to help edify the Body or are they affecting the Body?

In terms of sowing discord, or accusations made against the pastor, statements that were not brought before him and the persons, that these statements were made, of being unaccountable, a law unto himself, misappropriation of missions money, going to many different members, going to many different pastors, I have several pastors, ministers, reputed ministers, both within Calvary and outside of Calvary, that they have told me personally that they have told her in these last recent weeks when she has approached them, 'Constance, your spirit is wrong', 'You're sowing

discord', 'It's wrong', 'You need to change', — that has not stopped the action, it has continued, the various different statements that have been made, that would cause within the Body, the Body to begin to fall apart. Everyone is entitled to their own personal view, of how government, church government should be set up. No one questions that but when you begin to go to others in a questioning way, to try and get them to question leadership and question the way church is run, that brings about negative thinking in different people's minds that begins to separate the Body, this is what the Scripture says is sin, this is what is being done, this is what we're dealing with, this is what we're talking about tonight.

The motion was then put to the vote by polling the members. 101 members voted in favour of the EGM resolution, 15 members voted against and five abstained.

I have made somewhat extensive references to the proceedings at the EGM to show a number of things, eg that the plaintiff was aware of the EGM and the agenda, that the debate on the motion was not entirely one-sided and that the members present were aware that the plaintiff was not present to defend her conduct.

On 22 April 1988, the plaintiff wrote to the defendants as follows: (a) that the church board's accusations against her were unfounded; (b) that she was not put on *official* notice by the board or any member that the resolution to remove *her* would be moved by the board at the EGM as the agenda had referred only to removal of *members* sowing discord; (b) that in failing to give her notice of the EGM resolution, the church board had contravened the Act with regard to the giving of notices. She also demanded that the church board make an announcement to such effect at all services of the church on the following Sunday and also apologize to her and the church unreservedly.

On 25 April 1988, the church board informed her by letter that she had been removed as a member of the defendants on the grounds that she had acted in a manner unbecoming of a member and sowing discord within the Body. Before this letter could reach the plaintiff, she on 27 April 1988 sent another letter to reiterate her demands with respect to the coming Sunday. On 27 April 1988, the church board replied to the plaintiff's letter of 22 April 1988 and rejected the plaintiff's demands on the ground that the EGM resolution was lawful and effective. On 14 May 1988, the plaintiff commenced this action.

I now turn to the three issues which I have identified earlier:

Issue (1) — Was there a board meeting on 19 April 1988?

I have already mentioned that the plaintiff's allegation that this meeting was fictitious was formally made on the first day of trial after the plaintiff had applied to put in evidence, through a subpoena on the CAD, the file containing the minutes of meetings of the church board for the relevant years on the ground that the sequence and manner in which the minutes were kept were material to show that the board meeting of 19 April 1988 was fictitious. It is not relevant to this action how the plaintiff came to know that the said file was in the possession of the CAD, but the fact that the plaintiff considered the contents relevant must suggest that she had foreknowledge of the contents. In any case, her counsel was able to advance the hypothesis that the 19 April 1988 meeting was fictitious in reliance on the following factors:

(a) the board's letter of 25 April 1988 notifying the plaintiff of her removal referred the EGM resolution but not the board's decision; also, the subsequent letter dated 27 April 1988 also did not refer to the board decision;

(b) the affidavits filed on behalf of the defendants in answer to the plaintiff's 12 May 1988 affidavit, also failed to refer to the board meeting of 19 April 1988 but only to a board meeting of 8 April 1988 and the EGM;

(c) the minutes of the meetings of the church board showed that the church board had met twice in July 1988 to discuss and approve substantially the same matters.

From the omissions in (a) and (b), counsel argued that the board meeting was never held. From (c), it was argued that one of the July 1988 meetings was also fabricated, thus proving a disposition on the part of the church board to fabricate meetings. The plaintiff herself has not in any of her affidavits alleged positively that the board meeting was fabricated. She had merely stated that she did not know of such a meeting. It was counsel who boldly proceeded to cross-examine the defendants' witnesses to prove that charge or allegation. I summarize below the evidence of the members of the church board in this respect.

The Sr Pastor's explanation for not mentioning the board meetings of 19 April 1988 in his first affidavit was that it was made to meet the allegation of the plaintiff that the EGM was invalid. Although he thought that the EGM had all the powers of the board, he decided to hold the board meeting to confirm the resolution passed at the EGM as he had heard that the plaintiff was going to sue the church. In re-examination, the Sr Pastor said that when the affidavit was being prepared, the solicitors were informed of the events but the solicitor in charge advised that the board meeting was not important. The board only discovered the importance of that meeting in a subsequent discussion with another solicitor from the same firm.

Julie Lim, the secretary of the church board, said that she had not referred to the 19 April 1988 meeting in the letter dated 25 April 1988 because it had not oc-

curred to her. She confirmed that there was a meeting and that she had taken down the minutes.

After cross-examining these two deponents, counsel for the plaintiff closed his case. The defendants elected to call the other members of the church board to give oral testimony on the 19 April 1988 meeting.

The first witness was Pr Wendel D'Cotta who was also a pastor. He confirmed that he attended the board meeting of 19 April 1988 at which the board ratified the EGM resolution and also passed its own resolution to remove the plaintiff. He agreed that the church board did not discuss the propriety of the Sr Pastor moving the resolution to remove the plaintiff.

Pr Low Siew Chuan, the treasurer of the board and also a pastor, also testified, inter alia, that the church board and the church's pastoral staff had met to discuss the plaintiff's case before her removal, that he had met with and counselled the plaintiff in August-September 1987 and that other members of the pastoral staff had also counselled the plaintiff. He said that the plaintiff was invited to meet the board on 8 March 1988 to discuss her grievances but she did not want to attend and left it to her husband to attend the meeting, that the board waited for him to turn up and when he failed to do so, the board requested the pastoral staff to join the meeting so that the board could make some decisions. The board decided to send four pastors to the plaintiff's home in order to win her back to the church, but they were denied entry to her home. He said that after this episode, the board felt that it was fruitless to approach her further and that further approaches might prove to be detrimental to their safety or well being. [A reference to the police report on harassment]. Pr Low also testified that he attended the board meeting of 19 April 1988 which was called to confirm the decision of the EGM and that Julie Lim was not told specifically how she should write the letter informing the plaintiff of her removal.

Pr Low was cross-examined on the motive behind the EGM and the purpose of the 19 April 1988 board meeting. He said that the removal problem was brought up to the EGM because it was an emotional problem and that it was the first time that the church had decided to remove a member. He further said that it was called to record the decision of the board as it had not made such a decision at its meeting on 8 March 1988. In re-examination, he clarified this statement to mean that the board members wanted to record their personal decision on the matter although it was his opinion that it was not necessary to have the second resolution. He said that the letter of 25 April 1988 did not mention the resolution as it was written merely to inform the plaintiff of the members' decision.

The last witness was Mrs Elaine Wan, a housewife and also a pastor. She testified that she was present at a board meeting after the EGM. When shown the minutes of the board meeting of 19 April 1988, she confirmed that she had attended that meeting. She admitted that she could not remember the explanation given by the Sr Pastor for calling that meeting, or how it was called or how much notice was given to her to attend, except that it was sufficient.

I now turn to the cross-examination of these witnesses on the two board meetings of July 1988. I should first comment that this particular line of attack was sprung on the defendants witnesses without prior notice to the defendants. Julie Lim was the first witness to be confronted with the accusation that she was a party to the fabrication of a set of board minutes dated 10 July 1988. This accusation was based on the following documents of the defendants:

(1) 'A' — the typed and signed (by the secretary and the treasurer) minutes of a board meeting dated 10 July 1988 at which the board approved (a) a mission gift of construction material and equipment to the value of $150,000 to the Auckland Church, (b) a loan of a spare AT & T 3B2 400 computer to the said church. The minutes also recorded Pr Low's observation that the funding of the gift should be from the Missions Fund, his apologies that two directors were unable to be present and that the Sr Pastor, even if present, would have abstained from voting as the matters discussed concerned the Auckland Church of which he was also the chairman: there was in the file another two copies of these minutes, one unsigned and one signed only by the treasurer;

(2) 'B' — the handwritten minutes of Julie Lim, the secretary, of a board meeting on 10 July 1988 which recorded substantially the matters recorded in the typed minutes, except Pr Low's views on funding and the Sr Pastor's position and his offer of apologies;

(3) 'C' — a note of a board meeting in the handwriting of Chua Poh Cheng, the personal assistant of the Sr Pastor, which corresponded substantially with the typed minutes of the 10 July 1988 meeting; the note recorded the same board members as attending and also her own attendance and also a few matters not recorded in Julie Lim's minutes, eg references to the Manila Church, the incompatibility of the AT & T 400 computer with the AT & T 600 computer, etc;

(4) 'D' — the handwritten minutes of Julie Lim of a board meeting held on 21 July chaired by the Sr Pastor on the same matters approved at the 10 July 1988 meeting;

(5) 'E' — a copy of a fax from Chua to the Sr Pastor dated 28 July 1988 with the caption 'Gift to NZ Church' in the following terms:

I discussed with Pastor Low matters raised at meeting before your departure last week.

I told him Cos Act has specific provisions for loans to affiliated Cos but seems silent on gifts.

Pastor Low said the practice is that gifts from the Missions Fund need not go to the board. The underlying philosophy is that Missions Funds collected by the church are held in stewardship by the church leadership for the sole purpose of supporting missions.

In this case, since you are on the board of the repicient church, Pastor Low said that it is in your interest that the board meets with your abstention.

Since the board has technically met over the matter, it would, if you have no objection, proceed to do the needful.

On the above evidence, counsel for the plaintiff argued as follows: when Pr Low said that it was in the interest of the Sr Pastor that the board met 'with his abstention' and that the board should 'proceed to do the needful', Chua understood it as a direction to fabricate a board meeting approving the donations in the absence of the Sr Pastor. So Chua wrote out document C from which document A was prepared. Counsel suggested, inter alia, that this was a proper inference to draw as Pr Low did not mention the 10 July 1988 meeting to Chua, which he would have done if he had attended the purported earlier meeting. Accordingly, the Court should find that the meeting of 10 July 1988 was fabricated.

Counsel has submitted that this was similar fact evidence relevant to establishing that the board meeting of 19 April 1988 was also fabricated. Counsel for the defendants also made no submission on the admissibility of this allegation, even if proved. Accordingly, I will not consider the point of admissibility beyond saying that even if it were admissible, its prejudicial effect would far outweigh its probative value. I proceed now to consider whether the allegation is supported by the evidence.

The first point to note is that there was no conceivable purpose in the alleged backdating and fabrication of the 10 July 1988 board meeting. The donations to the NZ Church had not been effected and so there was nothing to prevent the board from holding another meeting at which, if necessary, the Sr Pastor would not attend or vote. Counsel for the plaintiff suggested that Chua must have concluded from Pastor Low's remarks that there was something wrong with the meeting of 21 July 1988. Chua has denied this. I find nothing in document E which could be interpreted as a direction to Chua to fabricate an earlier meeting. Pr Low was only expressing his unease that the Sr Pastor should have attended a meeting at which decisions involving him as the senior pastor of the giving and the receiving churches, particularly when the receiving church is abroad, but that since the board had 'technically' met, the board should proceed to do the needful. In this context, these words would bear a wholly innocent meaning. As counsel for the plaintiff suggested that the word 'technically' referred to the 21 July 1988 meeting, although Chua disagreed when the court asked her what it meant. She was however unable to explain what it meant. Having heard Chua on this point, I think that she had a faint memory of what the word was intended to refer to and that this was understandable, having regard to the circumstances in which document E was put before her. In my view the word 'technically' was referable to the 21 July 1988 meeting and that in spite of the Sr Pastor having attended or voted at the said meeting, the board would proceed to effect the gift. I do not accept counsel's suggestion that 'to do the needful' was a direction to fabricate the minutes of the meeting on 10 July 1988. That sentence can and should be given its ordinary and obvious meaning.

Apart from the textual considerations, there are other grounds for rejecting counsel's argument. The first is that there was no reason why Julie Lim's minutes should be different from Chua's notes if, as counsel had suggested, Chua gave her notes to Julie Lim to copy. The second is that Chua's notes were scribbled and not clearly legible. The character of the notes was more consistent with their having been scribbled in a meeting than with a pre-conceived plan to fabricate them. It is clear to me that both Julie Lim and Chua had taken notes of the meeting of 10 July 1988. The third is that all the members who were recorded to have attended both the meetings have testified in the witness box that they had attended the meetings. I am unable to find any reason for believing that they had reason to perjure themselves on the existence of the 10 July 1988 board meeting. Since Pr Low was so punctilious about the propriety of the Sr Pastor attending a meeting in which he had an interest not personally but as the senior pastor of the receiving church, I find it impossible to believe that he would suggest or agree to fabricate the prior meeting of 10 July 1988. Finally, the meeting of 21 July 1988 was called by the Sr Pastor. He would have been able to explain why he called the meeting but counsel for the plaintiff did not question him on this point or on documents A, B, C, D and E.

Accordingly, I reject the submission of counsel for the plaintiff that the meeting of 10 July 1988 was fictitious.

I will now consider the argument that the omission to refer to the 19 April 1988 meeting was due to the fact that there was no such meeting and the Sr Pastor's explanation for such omission. In her affidavit, the plaintiff had deposed as follows:

8 I further say that under art 9 ... members at an EOGM cannot remove an existing member from the membership of the church, for the removal of any member from the membership of the church is the prerogative of the church

board and only if the conditions as stated in art 9 are fulfilled. Article 9 states as follows:

Termination of Membership

(a) Members who have departed from Singapore permanently or who have transferred their membership to another church or otherwise acquired membership of another church shall ipso facto cease to be members of the church.
(b) The board may remove a person from membership of the church if such a person:
  (i) had acted in a manner unbecoming of a member;
  (ii) no longer subscribed to the Tenets of Faith;
  (iii) wilfully causes discord within the church. Romans 16:17-18.

Provided however that no such action shall be taken by the board unless and until patient and persistent efforts shall have been taken by some member or members delegated by the board to win such person back to the standard of faith and conduct required of an ordinary member of the church.

9 I further say that at all material times, I have not been put on official or unofficial notice by the church board or by any member of the church board that:
(1) I had acted in a manner unbecoming of a member;
(2) wilfully caused discord within the church. Romans 16:17-18.

10 I further say that at all material times, the conditions of art 9 of the articles of association of the church had never been fulfilled as I have at all material times not been aware nor been informed by the church board or some member or members delegated by the church board of:
(1) how I have acted in a manner unbecoming of a member;
(2) how I have sown discord within the church
nor has the church board taken any steps to approach me on the matter.

14 For the reasons aforestated, as the EOGM was held and the said resolution was passed in contravention of ss 177(2), (3) and (4) of the Companies Act and art 9 of the articles of association of the church and as I was deprived of the right to fair hearing to reply to the allegations made against me, I humbly pray for an order in terms of this application.

The Sr Pastor gave two reasons for not having done so: (a) that he thought the EGM resolution was effective to expel the plaintiff; and (b) his solicitor had advised that the board decision was irrelevant. In my view, it is not unreasonable to read paras 8 and 10 as conveying the general sense that the EGM had no power to remove the plaintiff and that the specific conditions for removal of a member by the board was regulated under art 9 rather than the specific sense that the board had passed no resolution thereunder. On this basis, the explanation given by the Sr Pastor is reasonable and believable. The first reason is consistent with and supported by the conduct of the defendants and their solicitors. Up to and including the first day of the trial, they were defending the action on the basis that the EGM resolution was effective to expel the plaintiff as a member. It was only when the court indicated its dissent from that view that counsel for the defendants conceded the point. As regards the second reason, although counsel for the defendants did not call the solicitor concerned to give evidence, I have no reason to suppose that the solicitor would have allowed the Sr Pastor to make a false statement in court concerning the advice given to the church board.

On the other hand, the conduct of the plaintiff during the pre-trial stage also shows that she had no reason to believe that the board meeting of 19 April 1988 was a fictitious meeting. She made no such allegation until the end of the first day of trial, and even then it was a formal allegation by way of an oral application to amend the re-amended originating summons. The only explanation consistent with the late amendment is that the plaintiff must have become aware that there was something in the file of board minutes in the possession of the CAD that could prove this allegation. In other words, until the day of the trial, it was reasonable for the defendants to have believed that the plaintiff's case was that the EGM had no power to remove her from membership and that the board meeting on 19 April 1988 was null and void for breach of the rules of natural justice but not that the board had passed no resolution to remove her from membership.

Having considered the evidence, I find that there was a board meeting on 19 April 1988. Furthermore, the internal evidence lends support its existence. The minutes of that meeting showed that the board not only ratified the EGM resolution but also passed its own resolution to remove her. If the sole purpose of the meeting had been, as suggested by counsel, to fabricate a resolution to meet a specific defence, there would have been no reason to ratify the EGM resolution. The evidence of the Sr Pastor and Pr Low was that the Board ratified the EGM resolution because they had obtained the decision of the members to remove her. Pr Low's explanation that the board passed their own resolution to remove her because the board members had not personally signified their personal views on the matter had, in my view, the ring of truth simply because it was such a guileless explanation.

All the board members who participated in the meeting of 19 April 1988 have testified on oath that they had attended the meeting. They were cross-examined by counsel for the plaintiff. A few of them could not recollect all the circumstances surrounding the said meeting. The Sr Pastor had very short notice of the allegation that the meeting was fictitious before he was cross-examined on it. The other members had sufficient advance notice (the trial having been adjourned), but their answers under cross-examination at the resumed hearing did not bear out any prior concerted effort on their part to harmonize their accounts of the meeting of 19 April 1988. Except for the argument on loyalty,

counsel for the plaintiff has offered no other reason why these witnesses would wish to bear false witness on the very Bible which formed the central tenet of their faith. It was suggested that they were prepared to perjure themselves to protect the Sr Pastor. However, counsel was unable to specify what it was that the Sr Pastor needed protection from in this action.

The plaintiff's charge against the defendants is no less than that the members of the church board have committed the following criminal offences in order to secure her removal as a member of the defendants: (1) giving false evidence under s 191 of the Penal Code (Cap 224, 1985 Ed) ('the Code'); (2) fabricating false evidence under s 192 of the Code; (3) using false evidence known to be false under s 193 of the Code; and (4) criminal conspiracy under s 120A of the Code. All these are very grave offences. In the face of these accusations, the members of the church board testified that they would welcome the plaintiff back to the church if she were willing to admit her wrongs against the church and to abide by a standard of faith and conduct required of her as an ordinary member.

Under the law the standard of proof in relation to an averment of a crime in civil proceedings is the balance of probabilities: see *Hornal* v *Neuberger Products Ltd.*[1] But, there are degrees of probabilities. In *Bater* v *Bater*[2] at p 37, Lord Denning said:

> As Best CJ, and many other great judges have said, 'in proportion as the crime is enormous, so ought the proof to be clear.' So also in civil cases, the case may be proved by a preponderance of the probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter.

In my view, the plaintiff's attempt to establish the charges solely through the means of cross-examinations and argument falls far short of the standard of proof required. On the contrary, even though the burden of proof is not on the defendants, I believe the evidence of the board members that they met on 19 April 1988 and decided to expel the plaintiff as a member of the defendants.

Article 9

I now turn to the contention that art 9 has been contravened in that the church board had not made patient and persistent efforts by some member or members delegated by the board to win her back to the standard of faith and conduct required of her. Counsel for the plaintiff has not contended that his client's conduct was not unbecoming of a member or that it had not sown discord within the church. I have already found that her failure to rebut the seven affidavits showed that any such contention would have been rejected by the court.

I also find that there was overwhelming evidence that efforts of a degree that were both patient and persistent had been made by members of the church board. The following members who were also pastors counselled the plaintiff, viz Pr Low in late 1987 and early 1988; Pr Chng in February 1988; Pastor Oon in January 1988. The church board held many pastoral meetings during this period. Pr Seaward also met the plaintiff in February 1988 in the presence of Rev Bob Weiner but she refused to specify her grievances. Then we have the extraordinary episode on 8 March 1988 when the plaintiff not only refused to meet the four pastors but also reported them to the police for harassment. I find it impossible to believe on the evidence before the court that the plaintiff did not know that the four pastors had come to talk with her about her conduct. The fact that she wilfully refused to be counselled, because in her own mind she had done no wrong, is immaterial to the question of whether patient and persistent efforts had been made.

The submission that there was no delegation is based on the absence of any board resolution to such effect. The ordinary meaning of the word 'delegate' is 'entrusted with the responsibility'. I do not think that art 9 requires the board to pass formal resolutions every time they desire to appoint pastors to counsel or win back doubting members. Every pastor who attended any church board meeting, pastoral or otherwise, at which the conduct of the plaintiff was discussed, and there were many of these, was entrusted with the responsibility of winning the plaintiff back into the fold. In my view, any informal delegation is sufficient, and therefore, each of the pastors who counselled the plaintiff was delegated, in law and in fact, to do so. There was informal delegation as there were many pastoral board meetings in connection with the conduct of the plaintiff. There is also evidence that the board has also appointed a pastoral committee, of which all the pastors were members, for the purpose of counselling members. In addition to efforts of the members of the board, there is also ample evidence of counselling done by other pastors who were not members of the board. Accordingly, I do not accept the argument of counsel for the plaintiff on this issue.

Breach of natural justice

The complaint is that the plaintiff's expulsion was in breach of the following rules of natural justice, viz, (i) the right to be heard by an unbiased tribunal; (ii) the right to have notice of the charges of misconduct, and (iii) the right to be heard in answer to those charges.

Counsel for the defendants has submitted that the rules of natural justice do not apply to a company incorporated under the Act. He refers to *Gaiman & Ors* v *National Association of Mental Health*[3] where Megarry J so held in the case of that company. In that case the association was incorporated under the Companies Act

1929 as a company limited by guarantee. Article 7(B) of the articles provided that 'A member of the association shall forthwith cease to be a member ... if he is requested by resolution of the council to resign, ... Without any prior notice, G and other members (who were scientologists) were requested by resolution of the council to resign. They commenced proceedings for a declaration that they had at all times been members and sought injunctive relief pending trial. Megarry J, after examining the existing authorities, held the rules of natural justice had no application to the case before him on four grounds: (i) the power under art 7(B) was exercisable by the council in what they bona fide believed to be in the interest of the corporation; (ii) a member's right of membership of a company was not absolute or until he was expelled for misconduct but until his membership was terminated by the council acting bona fide in what they believed to be in the interests of the company; (iii) art 7(B) was a wholly unrestricted power and not confined to cases of misconduct or the like; (iv) the membership of the association did not involve any proprietary interest or livelihood or reputation of the plaintiffs.

However, in the course of his judgement, Megarry J dealt with the argument that for the purpose of applying the rules of natural justice, there should be no distinction between an unincorporated club and a club which is incorporated as a company limited by guarantee as follows (at p 335):

> In the case of a company, whether limited by shares or guarantee, a new legal entity comes into existence, namely, the company; and many of the powers have to be exercised for the benefit of that entity. This distinguishes a company from an ordinary club, which is not a legal entity distinct from its members; and although a trade union, of course, possesses some of the characteristics of corporate personality, it is not a corporation either. The conversion of a club into a limited company, too, is no mere formality, but a change of substance. Where there is corporate personality, the directors or others exercising the powers in question are bound not merely by their duties towards the other members, but also by their duties towards the corporation. These duties may be inconsistent with the observance of natural justice, and accordingly the implication of any term that natural justice should be observed may be excluded. Furthermore, Parliament has provided a generous set of statutory rules governing companies and the rights of members, as contrasted with the exiguous statutory provisions governing trade unions and even more exiguous provisions governing clubs. Yet again, the authorities cited by Mr Neill, though not establishing his proposition, do indicate the extent to which the courts will go in enforcing the provisions of the articles, even where those provisions appear to operate harshly or unjustly. These considerations seem to me to militate against the application of the principles of natural justice in this field.

Counsel for the plaintiffs in the present action contends that *Gaiman*'s case[3] did not decide that the rules of natural justice are not applicable to a company and that Megarry J recognized that the rules of natural justice were capable of applying and ought to apply to cases of expulsion on the ground of misconduct or whether the livelihood or reputation of the member is affected (see pp 336G, 337A). I agree. Incorporation is an important factor to be taken into account, primarily because the directors owe a duty to act in the interest of the company which may be, in certain circumstances, incompatible with the application of the rules of natural justice. But it is not the only or decisive factor. Equally important is the nature of the decision to be made. Megarry J (at p 333) said:

> It may be there is no simple test, but that there is a tendency for the court to apply the principles to all powers of decision unless the circumstances suffice to exclude them. These circumstances may be found in the person or body making the decision, the nature of the decision to be made, the gravity of the matter in issue, the terms of any contract or other provision governing the power to decide, and so on: and consider *Durayappah* v *Fernando* [1967] 2 AC 337, 349. This, of course, does little by way of providing a clear test: but as the authorities stand, it may not be possible to do much more than say that the principles of natural justice will apply unless the circumstances are such as to indicate the contrary. Certainly I would say that the cases show a tendency to expand the scope of natural justice rather than constrict it.

In my view, the correct approach is not to ask what the defendants are but what the form and nature of the power is that is exercisable and the consequences to the affected member upon its exercise, having due regard to the express words of the power. The nature of the power in art 9 is expulsion on the grounds of misconduct. The power is not expressed in unrestricted terms. It may be that if the board makes a bona fide decision on the evidence before it that a particular member has been guilty of any misconduct, a court of law will not substitute its opinion for that of the board, but that is no reason for holding that the rules of natural justice should not apply in arriving at that opinion. Expulsion based on misconduct, as Megarry J said, is readily subject to the rules of natural justice. I am unable to find anything in the fact of incorporation of the defendants which makes it incompatible for the church board to exercise its powers in the interests of the defendants and to do it in compliance with the rules of natural justice at the same time. Unlike the power in *Gaiman*'s case,[3] the power of expulsion in art 9 cannot be exercised speedily as the board must make patient and persistent efforts to win back a wayward member. Nor is the defendants a church a factor against the application of the rules of natural justice. Moreover, in the present case, the condition that patient and persistent efforts be made implies giving the offender an opportunity to amend his ways. In *Dr Bentley*'s case,[4] Fortescue J said:

> The objection for want of notice can never be got over. The laws of God and of man both give the party an opportunity to make his defence, if he has any. I remember it

> observed by a very learned man, upon such an occasion that even God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam, says God, where art thou? Has thou not eaten of the tree whereof I commanded thee that thou shouldest not eat? And the same question was put to Eve also.

In my view, the rules of natural justice apply to the removal of members under art 9, subject to incompatibility with the existence of a corporate entity.

What then are the requirements of natural justice? In *Russell* v *Duke of Norfolk*[5] at p 118, Tucker LJ said:

> The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case. I think from first to last the plaintiff did have such opportunity.

Bias: Counsel for the plaintiff has relied on three aspects of the rules of natural justice. The first is bias. He claims that the board resolution of 19 April 1988 was bad as the Sr Pastor who moved it at a meeting chaired by him was biased, or there was a real likelihood of bias on his part since he was the victim of the plaintiff's complaints. It is also argued that the Sr Pastor chaired all the pastoral meetings at which the plaintiff's conduct was discussed, all the other board meetings as well as the EGM. It is also suggested that the Sr Pastor was both prosecutor and judge.

I do not accept this submission for the following reasons: firstly, I do not think that this aspect of natural justice applies to company or board meetings. Members are not required by law to vote in any person's interests (including that of the company) other than their own. Directors are only required to vote in the interest of the company and the members as a whole and to exercise their powers in good faith. The fact that one director has a personal animosity against another director or member does not mean that he cannot vote against that director's or member's interest in the interest of the company. The two are not incompatible. This is where Megarry J's analysis has specific applications. Secondly, in the circumstances of this case, the question of bias or likelihood of bias is irrelevant simply because the board's resolution to expel the plaintiff was made after and in confirmation of the EGM resolution. In convening the EGM, the church board had, perhaps unintentionally or adventitiously, taken a step which precluded any accusations of bias or likelihood of bias against any member of the board. The board had merely added its *imprimatur* to the decision of the general body.

Notice of charges and opportunity to be heard: In her affidavit, the plaintiff said that she was not aware that the resolution to remove her from membership would be moved at the EGM as the church bulletin had merely referred to 'Removal of members sowing discord within the church' and she was accordingly deprived of a 'right of fair hearing at the EOGM to reply to the allegations made against me in my absence'. On the evidence, I find that the plaintiff was aware that item one of the agenda was directed against her. This was a church with a very small membership. They met every Sunday for services. Regular attendance of Sunday services was an important act of showing the faith: see art 7(c) which provides for loss of ordinary membership if a member fails to attend regular church services for a continuous period of three months without cause. For months the plaintiff had been making accusations against the Sr Pastor and the leadership of the church to so many members and on so many occasions that it was impossible for her not to have been aware that she was the member regarded by the board or the Sr Pastor as sowing discord within the church or acting in a manner unbecoming of a member. In March 1988, the pastors had tried to meet with her and she rebuffed them and followed it up with a complaint to the police. Just before the visit, the Sr Pastor had warned the plaintiff's husband that possible action would be taken against her if she did not meet with the church board.

Against this background, it is difficult to imagine that the plaintiff did not know that she was one of the members that was the target of the EGM. There is documentary evidence from which it is reasonable to infer, and I do infer therefrom, that the plaintiff knew that the EGM was directed at her. On 14 April 1988, six members of the church, viz, Mr & Mrs Lee Cheong Hoh, Mr & Mrs Aubrey Seah and Mr & Mrs Alan Peck, wrote a letter to the executive committee of the Assemblies of God, Singapore, expressing their 'extreme concern with reference to our church, and, as of Sunday, 10 April 1988, have reasons for being gravely concerned over the conduct as well of the Sr Pastor ...', and seeking their 'urgent investigation and intervention into this matter' which included item one of the agenda for the EGM, a copy of which was enclosed. In my view, there was no reason for them to make this urgent appeal unless they were concerned with their being removed as members of the church.

For the above reasons, I find as a fact that the plaintiff was aware that item one of the agenda of the EGM was directed at certain members, one of which was herself. That was why she avoided the EGM. From the reply given by her husband at the EGM, I also find that she could have attended the EGM if she had really wanted to. She was not prepared to confront the church board with and explain or defend her accusations before the general body of the members. She was, however, defended by her husband and her friends at the EGM.

With respect to the 19 April 1988 board meeting, I find nothing in art 9 which says that the plaintiff had to be given another opportunity to be heard before the board could act to expel her. The terms of art 9 are such that by the time the board meet to make the decision all the conditions for removal are likely to have been complied with. Article 9 does not require the board to give to the affected member a last minute opportunity to repent his errant ways. All that it requires is that the board should be satisfied that patient and persistent efforts have been made and made in vain.

In *Stevenson* v *United Road Transport Union*,[6] the Court of Appeal accepted the formulation of Tucker LJ in the *Duke of Norfolk*'s case[5] on the requirements of natural justice and in addition said (at p 951):

> A case may be of so uncomplex a character and the issues may be so well known to all parties concerned that no more particular notice of any charges may be required, an opportunity for the party of whom complaint is made to state his case being sufficient.

I find this observation especially apt in the present case. The issues were well known to the plaintiff and the church board and many other members and associate pastors. There was a charge against members for sowing discord within the church. The plaintiff was aware of the said charge and the business of the EGM, which was to expel such members. She knew that she was one of such members, if not the only such member. She deliberately kept away from the EGM which was attended by her husband and her friends who defended her conduct at the EGM. In these circumstances, I do not think that the plaintiff is now in a position to complain that she was denied the opportunity to defend the charge or charges made against her at the EGM or that the church board in proceeding in the way it did had acted unfairly against her.

For the above reasons, this action is dismissed with costs.

Application dismissed.

Solicitors: *Haridass Ho & Partners; Wee Ramayah & Partners; B Rao & KS Rajah.*

Reported by *Yap Shao Sin*

Wong Kai Woon & Anor v Wong Kong Hom & Ors

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 709 OF 1989
RAJENDRAN JC
10 JANUARY 1991

Succession — Will — Construction of — Entitlement and rights of legatees and children of testator under the will — Power of trustees to sell property — Right of illegitimate children to share in the estate

Succession — Will — Interpretation of — Interpretation in accordance with the law of the testator's domicile at the time the will was made

The plaintiffs were trustees ('the trustees') of the will of one Wong Yoon Fee ('the testator') appointed under an order of court dated 1 August 1980. The plaintiffs applied under the present construction summons for determination of the following questions: (a) whether the sons of the testator have any interest in or right to share in the residuary estate; (b) whether the distribution of the gift of the residuary estate is intended to be made per capita or per stirpes; (c) whether the plaintiffs as trustees of the will have the power to sell certain properties; (d) whether illegitimate children have a right to share in the residuary estate; and (e) what would be the entitlement (if any) to the residuary estate of any member of the class who dies before the closing of the class.

At the hearing, counsel for the 11th to 14th defendants (i) challenged the probate copy of the will; (ii) disputed the forum; (iii) sought the removal of the trustees on grounds that they had committed breaches of trust.

Held, dismissing the preliminary issues, and determining the questions raised as follows:

(1) It was not appropriate to challenge the grant of probate nor seek the removal of the trustees at the hearing of a construction summons in the instant case.

(2) In the absence of indications to the contrary, a will is to be interpreted in accordance with the law of the testator's domicile at the time the will was made. The fact that the residuary estate consisted of landed properties situated in Malaysia, a different jurisdiction, does not alter this general rule. In the instant case, it was not disputed that the testator was domiciled in Singapore at the relevant time and there was no indication in the will that it was to be interpreted by some other law or in some other jurisdiction. The proceedings were therefore properly instituted in Singapore.

(3) It was clear from the provisions of the will that it was the specified grandchildren of the testator who were to share in the capital of the residuary estate. Accordingly, the sons of the testator had no interest or share in the residuary estate.

(4) Prima facie, a distribution made by a donor under a gift would be per capita and not per stirpes unless there were indications by the donor to the contrary. In the instant case, cl 13 (which provided that the children of 'each' of the testator's sons were to take 'one share or one share between them in equal shares') and cl 12 (which provided that where any one of the testator's sons dies, the sons of that son shall take, if more than one, in equal shares the share of the income of the testator's son who died) showed the intention of the testator that the distribution to the grandsons was to be per stirpes. Accordingly, the distribution was to be per stirpes.